

REMARKS AND CONCLUSIONS

Claims Status and Amendment

Claims 1-104 and 136-139 have been canceled, and claim 140 has been amended. Claims 104-135 and 140 remain in the application. Claims 104-107 and 140 belong to the elected Group III. An election of species was also required. Applicants elect the species of an extract of black raspberry with the additionally added compound of ellagic acid, a derivative of gallic acid. Claims that read on the elected species are claims 105, 106, and new claim 140.

Claims 108-135 belong to Group IV which Applicants submit should be rejoined as a single inventive concept and as dictated in MPEP §821.04 as discussed below.

The amendment to Claim 140 changes the preamble to reflect a composition claim, rather than the incorrect reference to a method claim.

Response and Traversal to Second Restriction Requirement

At the outset, Applicants respectfully submit that they previously elected a species for examination in response to the first restriction requirement. The Office is directed to pages 1 and 13 in the August 12, 2008 Amendment and Response to Restriction Requirement.

In this second restriction requirement, the Office entered a four-way restriction requirement. Claims corresponding to Groups I and II are canceled. Applicants elect Group III for examination and traverse the restriction requirement as applied to Groups III and IV. Applicants elect the species of an extract of black raspberry with the additionally added compound of ellagic acid, a derivative of gallic acid. Claims that read on the elected species are claims 105, 106, and 140.


Group III consists of composition/product claims, directed to extracts of black raspberry with certain technical features as in Claim 105 (Claims 105-107, 140). Group IV (Claims 108-135) consists of method claims directed to the use of the composition of Claim 105 of Group III. The single inventive concept of Groups III and IV is the presence of these technical features in the claimed extract of Claim 105. Applicants submit that under the PCT rules, these two groups should be rejoined.

In addition, Groups III and IV should be rejoined under the MPEP. If the product claims of Group III are allowed, the process claims of Group IV which include all the limitations of the product claims should be rejoined pursuant to MPEP §821.04 and the procedures set forth in the *Official Gazette Notice* dated March 26, 1996 (1884 O.G. 86). Section 821.04 states: "If applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." The method claims as currently written contain all the limitations of product claim 105. Applicants submit that Groups III and IV should thus be rejoined if the product claims of Group III are allowed.

Conclusion

Applicants respectfully submit that the composition claims of Group III are in condition for allowance, and that the method claims of Group IV should then be rejoined, and all claims subsequently allowed.

Respectfully submitted,



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January 7, 2009